

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

INNOVATIVE SOLUTIONS	:	
& SUPPORT, INC.,	:	
	:	CIVIL ACTION
Plaintiff,	:	
	:	No. 01-CV-157
v.	:	
	:	
GLOBAL ACCESS UNLIMITED,	:	
Defendant.	:	

**MEMORANDUM**

**GREEN, S.J.**

**July , 2001**

Presently before the court is Defendant's Motion to Dismiss for Lack of Personal Jurisdiction pursuant to Fed. R. Civ. P. 12(b)(2) and Improper Venue pursuant to Fed. R. Civ. P. 12 (b)(3), or, in the alternative, Motion to Transfer Venue to the United States District Court for the Middle District of Florida pursuant to 28 U.S.C. §1404(a) and Plaintiff's Response. For the reasons set fourth below, Defendant's motion will be denied.

**I. FACTUAL AND PROCEDURAL BACKGROUND**

On February 7, 2000, Plaintiff Innovative Solutions & Support, Inc. submitted a purchase order to Defendant Global Unlimited Access for 2000 units of an analog component device. (See Compl. ¶ 4; Ex. 1.) The price per unit was \$18.16, which amounts to a total price of \$36,320.00. (See Compl. ¶ 4; Ex. 1.) In response to Plaintiff's purchase order, Defendant issued a "non-cancellable/non-returnable products(s) conditions of sale" letter to Plaintiff on February 10, 2000. (See Compl. ¶ 5; Ex. 2.) Both parties acknowledge that they formed a contract ("Contract") on February 10, 2000. (See Def. Mot. at 4; Pl.'s Resp. at 2.) However, Plaintiff contends that Defendant breached the Contract by failing to fulfill Plaintiff's purchase order. (See Compl. ¶ 6.) As a result of Defendant's alleged breach of the Contract, Plaintiff allegedly

sought cover from another source and suffered damages in the amount of \$128,650.00 above the original Contract price. (See Compl. ¶ 10.) Defendant avers that it did not fulfill the order, because it believed that Plaintiff had cancelled the order. (See Bauer Aff. at ¶ 18.)<sup>1</sup>

On January 11, 2001, Plaintiff filed a complaint alleging breach of contract against Defendant for which it demands \$128,650.00 in damages. Defendant now moves to dismiss the Complaint for lack of personal jurisdiction and improper venue or, in the alternative, moves to transfer this case to the United States District Court for the Middle District of Florida. Plaintiff filed a response in opposition to Defendant's motion.

## **II. DISCUSSION**

### **A. Personal Jurisdiction**

A federal district court may assert personal jurisdiction over a nonresident defendant to the extent authorized by the law of that state in which the action is brought, consistent with the demands of the Constitution of the United States. See Provident Nat'l Bank v. California Fed. Sav. & Loan Ass'n, 819 F.2d 434, 436 (3d Cir. 1987) (citing Fed.R.Civ.P. 4(e)). This court resides in the Eastern District of Pennsylvania. Therefore, Pennsylvania law applies as to this court's exercise of personal jurisdiction over a nonresident defendant. The Pennsylvania Long Arm Statue provides in relevant part:

[T]he jurisdiction of the tribunals of this Commonwealth shall extend . . . to the fullest extent allowed under the Constitution of the United States and may be based on the most minimum contact with this Commonwealth allowed under the Constitution of the United States.

42 Pa.C.S.A. § 5322(b).

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<sup>1</sup>Dana Bauer is Defendant's President. (See Bauer Aff. at ¶ 1.)

There are two distinct bases upon which personal jurisdiction can be premised—general jurisdiction and specific jurisdiction. See Burger King Corp., 471 U.S. 462, 476 (1985). General jurisdiction exists when the nonresident defendant engages in continuous and systematic contacts in the forum state, regardless of whether the cause of action has any connection with the forum. See Helicopteros Nacionales de Colombia, S.A. v. Hall, 466 U.S. 408, 414, n.9 (1984); Provident Nat’l Bank, 819 F.2d at 437. In contrast, specific jurisdiction exists when there are no continuous and systematic contacts, but the plaintiff’s claim is related to or “arises out of” the defendant’s contacts with the forum state. See Helicopteros, 466 U.S. at 414, n.8.

A finding of specific jurisdiction requires a two-step analysis. First, the plaintiff must demonstrate that the defendant had the constitutionally sufficient “minimum contacts” with the forum. See Burger King, 471 U.S. at 474. Minimum contacts are established when the “defendant’s conduct and connection are such that [the defendant] should reasonably anticipate being haled into court there.”<sup>2</sup> Id. Second, if minimum contacts exist, the court must determine whether the exercise of specific jurisdiction over the defendant comports with “traditional notions of fair play and substantial justice.” Burger King, 471 U.S. at 462 (quoting International Shoe Co. v. Washington, 326 U.S. 310, 316 (1945)). When a defendant challenges the presiding court’s jurisdiction, the plaintiff has the burden of bringing forward sufficient facts to establish with reasonable particularity that there were sufficient contacts between the defendant and the

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<sup>2</sup> “[T]he minimum contacts test... is not susceptible of mechanical application; rather the facts of each case must be weighed.” Mellon Bank (East) PSFS, 960 F.2d at 1224 (quoting Kulko v. Superior Court, 436 U.S. 84, 92 (1978)). However, the Supreme Court of the United States has held that an isolated incident may provide personal jurisdiction. See McGee v. International Life Insurance Co. 355 U.S. 220, 223 (1957). Therefore, a nonresident’s involvement in a single contract or isolated business transaction in the forum state may provide a sufficient basis for the application of long arm jurisdiction over the nonresident. See id.

forum to warrant jurisdiction over the defendant. See Mellon Bank (East) PSFS v. Farino, 960 F.2d 1217, 1223 (3d Cir. 1992).

In the present matter, Defendant moves to dismiss the Complaint for lack of personal jurisdiction. Defendant argues that general jurisdiction is lacking, because Defendant did not engage in “continuous and systematic” contacts in Pennsylvania. Defendant maintains that it is a Florida resident with its sole place of business located in Florida. (See Bauer Aff. at ¶¶ 2, 3.) Furthermore, Defendant claims that it is not licensed in Pennsylvania and has no “office, property, plant, telephone, mailing address, employees, sales agent or representative, agent for service of process or bank accounts” in Pennsylvania. (See Bauer Aff. at ¶ 6.) Although Defendant admittedly distributes electronic parts throughout the United States, including Pennsylvania, Defendant argues that it does not advertise in any specific Pennsylvania media or target its products or sales activities toward Pennsylvania citizens. (See Bauer Aff. at ¶¶ 7, 8.) Allegedly, less than 1% of Defendant’s worldwide sales are in Pennsylvania. (See Bauer Aff. at ¶ 10.) Defendant also argues that specific jurisdiction is lacking. Defendant alleges that it did not engage in the necessary “minimum contacts” in Pennsylvania to “reasonably anticipate being haled into [it’s] court[s].” Defendant asserts that it did not initiate contact with Plaintiff in Pennsylvania nor target its activities toward citizens in Pennsylvania. (See Bauer Aff. at ¶ 12.)

Plaintiff does not present arguments to support this court’s general jurisdiction over Defendant. Instead, Plaintiff argues that specific jurisdiction may be properly exercised over the Defendant, because Defendant meets the “minimum contacts” necessary with Pennsylvania to anticipate being haled into its courts.<sup>3</sup> Absent the present dispute, Plaintiff contends that the

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<sup>3</sup>Plaintiff asserts that if the court finds that personal jurisdiction is lacking, Plaintiff “should be afforded an opportunity to conduct jurisdictional discovery to determine if such exist.” (See Pl.’s Resp. at 10-11.)

parties have successfully conducted business together on at least fourteen (14) occasions. (See Mitchell Aff. at ¶ 5.)<sup>4</sup> Moreover, when Defendant allegedly breached the Contract, Plaintiff argues that it was affected in Pennsylvania.<sup>5</sup> Plaintiff contends that Pennsylvania has an interest in protecting its citizens against breaches of contracts.

Upon review of the instant motion and the response thereto, I conclude that Plaintiff has satisfactorily demonstrated that this court may properly exercise specific personal jurisdiction over Defendant. Both parties agree that Defendant knowingly entered into an agreement with Plaintiff, a Pennsylvania resident, for the sale and delivery into Pennsylvania of 2000 units of specific analog component devices. (See Def. Mot. at 4; Pl.'s Resp. at 2.) Furthermore, Plaintiff alleges, and Defendant does not deny, that the parties successfully conducted business activities between themselves, which involved the transportation of merchandise from Florida to Pennsylvania, on at least fourteen (14) occasions. (See Mitchell Aff. at ¶ 5.) Given the unique type of product that Defendant allegedly contracted to deliver into Pennsylvania, the alleged harm that it caused Plaintiff and the course of business dealings involving fourteen (14) other business transactions, I conclude that those contacts are sufficient to bring Defendant within reach of Pennsylvania's long arm jurisdiction. Furthermore, Defendant's alleged contractual agreement with a Pennsylvania resident and alleged breach of that contractual duty created circumstances whereby Defendant should have reasonably anticipated being haled into court in

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<sup>4</sup>Roger Mitchell is Plaintiff's Vice President of Operations. (See Mitchell Aff. at ¶ 1.)

<sup>5</sup>Plaintiff contends that it relied on Defendant to supply the devices. (See Compl. ¶ 8.) Allegedly, no right of cancellation was included in the purchase order, the conditional letter of sale, or in any other document pertaining to the sale. (See Compl., Ex.s 1,2.) Therefore, Plaintiff argues that Defendant's purported cancellation of Plaintiff's order amounted to a breach of the contractual agreement. (See Compl. ¶ 8.)

Pennsylvania. Thus, Defendant is subject to personal jurisdiction in Pennsylvania, and Defendant's Motion to Dismiss the Complaint for Lack of Personal Jurisdiction will be denied.

***B. Improper Venue***

Title 28 U.S.C. § 1391(a) provides in relevant part:

A civil action wherein jurisdiction is founded only on diversity of citizenship may . . . be brought only in (1) a judicial district where any defendant resides . . . , (2) a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred, or . . . (3) a judicial district in which any defendant is subject to personal jurisdiction at the time the action commenced, if there is no district in which the action may otherwise be brought.

Defendant contends that venue is improper in Pennsylvania. Rather, Defendant argues venue is proper only in the United States District Court for the Middle District of Florida, because Defendant resides in Florida. Defendant is correct that, absent being a resident in Pennsylvania, venue cannot be premised upon Defendant's Florida residence. However, because a substantial portion of the acts and omissions giving rise to the claim occurred in the Eastern District of Pennsylvania, venue is proper here. Therefore, Defendant's Motion to Dismiss for Improper Venue will be denied.

***C. Transfer of Venue***

A court may transfer any civil action to any other district for the convenience of parties and witnesses, and in the interest of justice. See 28 U.S.C. §1404(a). "The burden is on the moving party to establish that a balancing of proper interest weighs in favor of the transfer, . . . 'and unless the balance of convenience of the parties is strongly in favor of the defendant, the Plaintiff's choice of forum should prevail.'" Shutte v. Armco Steel Corp., 431 F.2d 22, 25 (3d Cir. 1970).

Defendant alternatively moves to transfer venue to the Middle District of Florida. Plaintiff opposes transfer of venue. Upon reviewing Defendant's motion and the response

thereto, I find that Defendant has failed to meet its burden of showing that the balance of convenience of the parties is strongly in its favor. Defendant argues that transferring this matter to the Middle District of Florida would be more convenient for the parties and witnesses in this matter. However, Defendant fails to produce any evidence to support its contention. Weighing the interests enumerated in 28 U.S.C. § 1404(a), I conclude that the relevant factors weigh in favor of honoring Plaintiff's choice of forum. Accordingly, this matter shall remain in the United States District Court for the Eastern District of Pennsylvania and Defendant's Motion to Transfer Venue will be denied.

An appropriate order follows.

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INNOVATIVE SOLUTIONS	:	
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	:	CIVIL ACTION
Plaintiff,	:	
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	:	No. 01-CV-157
v.	:	
	:	
GLOBAL ACCESS UNLIMITED,	:	
Defendant.	:	

**ORDER**

**AND NOW**, this            day of July, 2001, upon consideration of Defendant Global Access Unlimited's Motion to Dismiss Plaintiff's Complaint for Lack of Personal Jurisdiction and Improper Venue or, in the alternative, Motion to Transfer Venue and Plaintiff's Response, **IT IS HEREBY ORDERED THAT** Defendant's Motion to Dismiss or, in the alternative, Motion to Transfer Venue is **DENIED**.

BY THE COURT:

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CLIFFORD SCOTT GREEN, S.J.